

OCT 07 1999

ORDINANCE NO. 1740

STREET DEPT./CITY HALL
CITY OF SANTA CLARA

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, ADDING A NEW ARTICLE VIII [ENTITLED "SANTA CLARA DOWNTOWN BUSINESS IMPROVEMENT DISTRICT"] OF CHAPTER 16.10 [ENTITLED "LOCAL IMPROVEMENTS - ACQUISITION AND IMPROVEMENT PROCEDURE"] OF TITLE 16 [ENTITLED "LOCAL IMPROVEMENTS"] TO THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ESTABLISH A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT.

NOW THEREFOR, BE IT ORDAINED BY THE CITY OF SANTA CLARA, as follows:

WHEREAS: On July 20, 1999, the City Council of Santa Clara, on behalf of the City of Santa Clara, (the "City"), adopted Resolution 6605 (the "Resolution"), declaring its intention to establish a Parking and Business Improvement District ("District"), to levy a benefit assessment on all businesses, trades, professions, and vendors within said District, the proceeds of which shall be used for the public purposes herein described to benefit the businesses in the District, pursuant to the Parking and Business Improvement Area Law of 1989, (commencing with Section 36500) of the California Streets and Highways Code ("Act");

WHEREAS: Pursuant to the Act and the Resolution, City conducted a public hearing, after having given due notice thereof as required by law, on August 17, 1999, at 7:00 p.m., at City Hall, 1500 Warburton Avenue, Santa Clara, California;

WHEREAS: Said public hearing has been held and the City Council has heard and considered all oral and written protests and other comments regarding such proposed actions;

WHEREAS: Protests in writing from businesses in the proposed District paying fifty (50%) percent or more of the proposed assessment have not been received;

WHEREAS: This City Council has now determined to establish the proposed District as a Parking and Business Improvement Area, to provide for the imposition of a benefit assessment and to adopt an ordinance to such effect;

WHEREAS: In the opinion of this City Council, the businesses within the District will be benefited by the expenditure of the funds raised by the assessments levied hereby in the manner prescribe herein;

WHEREAS: This City Council may, for each of the purposes set forth in Section 36513 of the Act, establish one or more separate benefit zones based upon the degree of benefit derived from the formation of the District, and may impose a tiered assessment or charge within each of the benefit zones;

WHEREAS: All provisions of the Act applicable to the establishment, modification, or disestablishment of a District shall apply to the establishment, modification, or disestablishment of benefit zones pursuant to the Act, and the establishment or the modification of any benefit zone shall follow the same procedure as provided for under the establishment of a parking and business improvement district; and the disestablishment of a benefit zone shall follow the same procedure as provided for disestablishment of a District;

WHEREAS: upon the request of the District Board of Directors, this City Council shall commence the proceedings required by law to amend the boundaries, assessments or charges established pursuant to this Ordinance subject to approval of the Board of Directors of the District as expressly provided for herein; said modifications being made pursuant to the procedural requirements of the Act, but no assessment or charge shall be modified which would impair the ability of the District to meet the obligations of a contract to construct or operate physical improvements in the District;

WHEREAS: adjustments may be made in the assessments or charges to businesses in the District, or in the uses to which the revenue shall be put, as specified in this Ordinance and subject to Board approval, provided such changes are made by a supplemental Ordinance adopted after a hearing before the City Council;

WHEREAS: for purposes of the assessments or charges to be imposed pursuant to this Ordinance, this City Council may make a reasonable classification of businesses, giving consideration to various factors, including general benefit to businesses and the degree of benefit received from District programs; and

WHEREAS: The assessments or charges levied on businesses pursuant to this Ordinance shall, to the maximum extent feasible, be levied on the basis of the estimated benefit to the businesses within the District.

NOW THEREFOR, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, as follows:

SECTION 1: That "The Code of the City of Santa Clara, California," [City Code] is in the process of recodification. Article VIII is an entirely new addition to the City Code.

SECTION 2: That a new Article VIII [entitled "Santa Clara Downtown Business Improvement District"] of Chapter 16.10 [entitled "Local Improvement - Acquisition and Improvement Procedure"] of Title 16 [entitled "Local Improvements"] is added to "The Code of the City of Santa Clara, California," to read as follows:

"Article VIII Santa Clara Downtown Business Improvement District."

16.10.890 Resolution of Intention, Public Hearing and Findings.

The Recitals hereof, which set forth facts regarding the adoption of this Ordinance, the conduct of public hearings and certain findings of the City Council, are true and correct and incorporated herein by reference.

16.10.900 Definitions.

In order to distinguish between District businesses and for the purpose of calculating and applying the amount of assessments owed, the following definitions shall apply:

- (a) Billing Period: "Billing Period" shall refer to the calendar year.
- (b) Calendar Year: "Calendar Year" means January 1st to, and including, December 31st of the same year.
- (c) Financial: Banks, savings and loans, credit unions, etc.
- (d) Lodging: "Lodging" businesses include inns, hotels, motels, RV Parks and other similar businesses.
- (e) Professional: "professional" includes attorneys, architects, accountants, engineers, surveyors, physicians, dentists, optometrists, chiropractors and others in a medical/health service field, consultants, real estate brokers, financial advisors, laboratories (including dental and optical), hearing aid services, artists and designers.
- (f) Restaurants: "Restaurant" businesses include cafes, eating establishments, sandwich shops, dinner houses, restaurants and fast food services and other similar businesses.
- (g) Retail Businesses: "Retail Businesses" include all businesses not covered by other definitions set out in this section, at least fifty percent (50%) of whose gross income is derived from "retail sales" as that term is defined under the California Sales and Use Tax Law. The fact that a substantial part of its business consists of sales other than retail sales does not exclude said business from this classification so long as

such other business component does not account for more than fifty percent (50%) of said business' gross income.

- (h) Service: "Service" businesses include general office, news and advertising media, printers, photographers, personal care facilities and outlets, entertainment uses, service stations, repairing and servicing businesses, renting and leasing businesses, utilities, vending machine businesses, household finance companies, and other similar businesses not otherwise included in categories a, b, c, e, or f of this Section.

16.10.910. Excluded Business Types.

The following business types are excluded from participating in the District:

- (a) Residential uses
- (b) Non-profit organizations
- (c) Schools
- (d) Governmental uses
- (e) Apartment rentals
- (f) Pre-school and day care facilities
- (g) Hospitals
- (h) Business uses in residential homes.

16.10.920 Establishment of Boundaries.

A Parking and Business Improvement District is hereby established pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code Section 36500 et seq. The boundaries of the District and the benefit zones within the District shall be as set forth on Exhibit "A," attached hereto and incorporated herein by reference. The District shall be known as the "Santa Clara Downtown Business Improvement District" (the "District").

16.10.930 Establishment of District Board of Directors.

There shall be a Board of Directors of the District ("Board") to administer the affairs of the District. Said Board shall consist of businesses within the District. Within the Board there shall be a President, Vice-President, Secretary and Treasurer elected by the membership, and such other officers as deemed necessary by the Board. Such other officers shall be appointed by the Board of Directors at their discretion. All voting within the District regarding election of Board Members and any actions regarding the normal and routine conducting of District Business shall be based on one (1) vote per assessed dollar, and said business must be current in payment of their District assessment(s) to participate in such votes.

16.10.940 Establishment of Benefit Assessment.

All businesses, trades, and professions located within the District boundaries shown on Exhibit "A" shall, commencing January 1, 2000, pay an annual benefit assessment to the District in the following amounts:

TYPE OF BUSINESS	ZONE A	ZONE B
Retailers and Restaurants	\$150. (1-3 emp.) \$225. (4-6 emp.) \$300. (7+)	\$ 75. \$112.50 \$150.
Service Businesses	\$150. (1-3 emp.) \$250. (4+ emp.)	\$ 75. \$125.
Professional Businesses	\$100.	\$ 75.
Financial Institutions	\$500.	\$500.
Lodging, per complex (Bed / Breakfast)	\$150.	\$150.
(Hotels, Motels)	\$200.	\$200.

Note: Retail, restaurant and service businesses will be charged based upon the number of employees, either full-time or the equivalent made up of multiples of part-time employees.

16.10.950 Purpose and Use of Benefit Assessments.

The types of improvements and activities proposed to be funded by the levy of assessments on businesses in the District, including but not limited to the following:

- (a) Promotion of public events which benefit businesses in the area and which take place on or in public places within the area;
- (b) Furnishing of music in any public place in the area;
- (c) Promotion of tourism within the area; and
- (d) Activities which benefit businesses located and operating in the area, including but not limited to commercial shopping and promotional programs.

The assessment levied hereunder must be used for the purpose specified in this Ordinance and the proceeds shall not be used for any other purpose.

16.10.960 Exclusions From Benefit Assessment.

No person or business in the District shall be required to pay an assessment based on: (a) a residential use of the property, or (b) a non-profit organization as defined by Section 501(C)(3) or (C)(6) of the Internal Revenue Service Code.

16.10.970 New Businesses Assessment Waiver.

Any new business established within the District shall not be required to pay an assessment for the billing period during which said business is initiated. The business will have been considered initiated on the date of issuance of the business tax certificate. This waiver shall not apply to an existing business that has changed ownership or location within the District.

16.10.980 Collection of Benefit Assessment.

- (a) The benefit assessment authorized by this Ordinance for Santa Clara businesses shall be billed and collected each calendar year and due on January 1 for that calendar year. City will bill and collect the assessments, at no charge to the District and forward all funds collected to the District within 30 days of said collections.
- (b) Late payment penalties shall be applied to businesses that do not provide their respective assessment payments on the dates provided for herein at a rate of 10% per month. At such time as late payment penalties equate to 50% of the total annual assessment, action shall be taken to recover said delinquent assessments. Costs of this recovery shall be borne by the business owing the assessment and late penalties.

16.10.990 Voluntary Contributions to District.

Contributions from businesses outside the District boundaries shall be permitted on a voluntary basis. The boundary of the District shall not be modified as a result of the contribution, nor shall said contributing business be considered a member of the District for voting or other purposes. However, said business making a voluntary contribution may be entitled to participate in the programs of the District upon a finding by the Board of Directors that the District derives a benefit from said business' participation in the program.

16.10.1000 Annual Budget Process.

Pursuant to the California Streets and Highways Code, Sections 36533, 36534, 36535, it shall be necessary for the Board to present an annual budget for City Council review and approval prior to the beginning of each fiscal year.

16.10.1010 District Proceeds Do Not Offset City Services.

City specifically finds and declares that the funds derived from the District shall not be used to offset or diminish current maintenance, capital improvement programs, including but not limited to, public property and sidewalk cleaning, street cleaning and maintenance, tree maintenance, restroom cleaning and maintenance. The City declares its intent to provide at least the same level and standard of maintenance and repair of public property within the District as are available from year to year.

16.10.1020 Disestablishment of the District.

Proceeding to disestablish the District shall be initiated by the City Council following the procedures set forth in the California Streets and Highways Code, Section 36550. In the event of disestablishment of the District, remaining revenues of the District shall be refunded to paying business owners as set forth in the California Streets and Highways Code, Section 36551."

SECTION 3: Savings clause:

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance.

SECTION 4: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 5: Effective Date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 21st day of September 1999,
by the following vote:

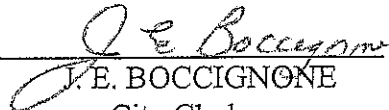
AYES: COUNCILORS: Diridon, McLemore, Matthews, Parle
and Mayor Nadler

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: Gillmor and Mahan

ATTEST:


J. E. BOCCIGNONE
City Clerk
City of Santa Clara

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
SANTA CLARA this 5th day of October 1999, by the following votes:


AYES: COUNCILORS: Diridon, Matthews, McLemore, Parle
and Mayor Nadler

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: Gillmor and Mahan

ATTEST:


J. E. BOCCIGNONE
City Clerk
City of Santa Clara

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EXHIBIT "A"

The boundaries of the limits of the Downtown Santa Clara Business Improvement District, and the boundaries of each separate benefit zone are presented on the map marked EXHIBIT "A" (pg. 2 of 2), on the file with the City Clerk of the City of Santa Clara.

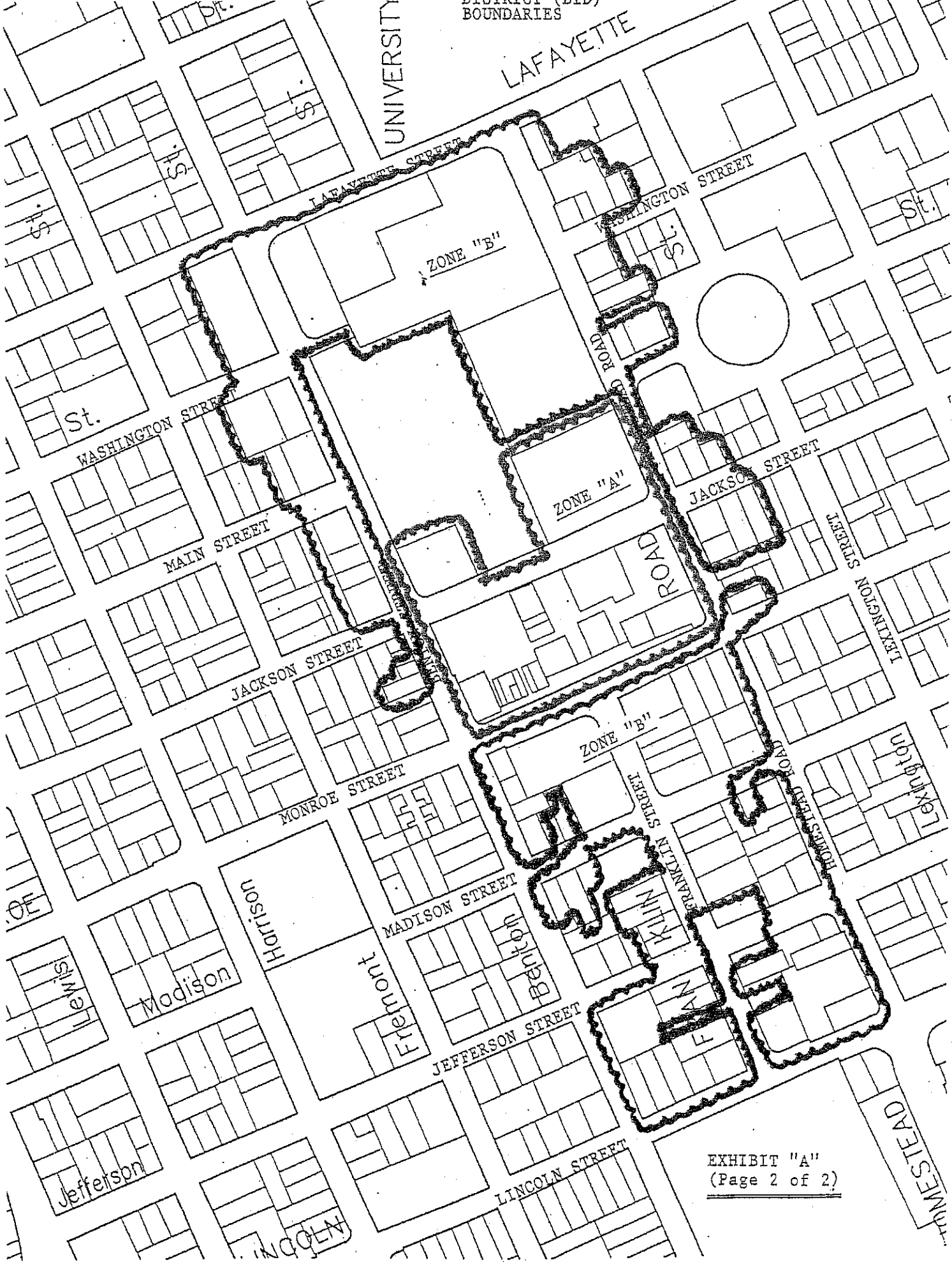


EXHIBIT "A"
(Page 2 of 2)